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Court : Rajasthan

Decided On : Dec-11-1987

Reported in : 1988WLN(UC)45

Judge : J.R. Chopra, J.

Appeal No. : S.B. Criminal Jail Appeal No. 142 of 1987

Appellant : Puriya

Respondent : State of Rajasthan

Judgement :

J.R. Chopra, J.

1. This jail appeal is directed against the judgment dated March 28, 1987 of the learned Sessions Judge, Jalore where by the learned Sessions Judge has convicted the accused-appellant Puriya of the offences under Sections 304 Part-II and 324 IPC and has sentenced him to four years rigorous imprisonment together with a fine of Rs. 100/- and in default, further undergo one month's rigorous imprisonment for the offence under Section 304 Part-II, IPC and to one month's rigorous imprisonment under Section 324 IPC. Both the substantive sentences were ordered to run concurrently.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are: that on 28-10-1985, at about noon, accused Puriya armed with an axe was going on the way near the Bus Stand. Mst. Kankoo was also coming on that way. She was a widow. Accused Puriya thought that he has met a widow while going to his sacred work which according to him was a bad omen and, therefore, he has inflicted an axe-blow on her right jaw and on account of that injury, she died. A case under Section 302 IPC was registered against him. The accused was arrested. The Doctor opined that this injury was likely to cause the death of Mst. Kankoo and, therefore, the accused Puriya has been held guilty of the offence under Section 304 Part-II, IPC for inflicting injury on Mst. Kankoo.

3. It is alleged that in the way, he also met with one child Chuniya and inflicted an axe blow, which has caused a simple injury on his back and, therefore, he has been held guilty of the offence under Section 324 IPC. He has been sentenced by the learned lower court for this offence as aforesaid. Hence, this appeal through jail.

4. Mr. Suresh R. Kumbhat, learned Counsel for the accused-appellant Puriya does not challenge the conviction of the accused-appellant Puriya recorded by the learned Sessions Judge, Jalore. He has, however, submitted that at the time of the occurrence, the accused was only 20 years old. It is his first offence. There was no premeditation. No enmity existed between them. This incident has happened at the spur of the moment. He did not repeat the axe-blow. Of course, the injury caused by him was likely to cause her death but that is most unfortunate but looking to the age of the accused and further looking to the fact that the occurrence took place at the spur of the moment without any enmity or premeditation, the accused appellant Puriya deserves to be released on probation. I am not inclined to accept this contention of Mr. Kumbhat on the simple ground that to be a widow is no offence. It is a social status which one gets on account of the death of her husband and if the honour of the ladies is challenged in this manner, it will be most unfortunate for the society. It is her misfortune that she has become widow and if on account of this, she cannot walk on the road or should not meet the people frequently, is a thinking which should not be allowed to develop in the society. The honour of the ladies should be preserved and

protected. I. therefore, refuse to extend the benefit of probation to the accused-appellant Puriya.

5. However, looking to the fact that at the time of the incident, accused Puriya was aged only 20 years and he had no previous enmity with Mst. Kankoo and further the occurrence took place all of a sudden at the spur of the moment without any premeditation and, therefore, accused-appellant Puriya deserves leniency so far as the sentence is concerned. I am fortified in this view by *Hardayal Singh v. State* 1983 R.Cr. Cases-37 and *Kishan Lal v. State* 1986 Cr.LR (Raj.) 29.

6. In the result, I partially accept this appeal and maintain the conviction of accused-appellant Puriya recorded under Section 304, Part-II and 324 IPC. The sentence awarded to him under Section 324 IPC is also maintained. However, the sentence awarded to him under Section 304 Part II IPC i.e. four year's rigorous imprisonment together with a fine of Rs. 100/- and in default to further undergo one month's rigorous imprisonment is reduced to the sentence already undergone. Both the substantive sentences recorded under Sections 304 Part II and 324 IPC shall run concurrently. If he is not required in any other case, he may be released forthwith.